

GENERAL GOVERNMENT CABINET
Department of State
Office of Business Services
(New Administrative Regulation)

30 KAR 5:031. Acceptance and refusal of records.

RELATES TO: KRS. KRS 355.9-513A, 355.9-515, 355.9-516, 355.9-516A, 355.9-520, 446.030

STATUTORY AUTHORITY: KRS 355.9-526(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 355.9-526(1) requires the Secretary of State to promulgate administrative regulations implementing KRS Chapter 355.9. This administrative regulation establishes the requirements relating to the acceptance and refusal of records.

Section 1. The filing office shall refuse to accept a UCC record for any reason, or multiple reasons pursuant to KRS 355.9-516. The filing office may refuse to accept a UCC record pursuant to KRS 355.9-516A.

Section 2. Except for UCC records rejected under KRS 355.9-516A of this administrative regulation, the duties and responsibilities of the filing office with respect to the administration of the UCC shall be ministerial. In accepting for filing or refusing to file a UCC record the filing office shall not:

- (1) Determine the legal effect of the UCC record;
- (2) Determine that information in the record is correct or incorrect, in whole or in part; or
- (3) Create a presumption that information in the record is correct or incorrect, in whole or in part.

Section 3. (1) A continuation statement may be filed: six (6) months preceding the month in which the financing statement would lapse and on the date that corresponds with the date the financing statement would lapse or if there is no corresponding date, on the last day of that month.

(2) The last day on which a continuation statement may be filed shall be the date upon which the related financing statement lapses, or the next business day the filing office is open for business.

Section 4. (1) If the filing office finds grounds to refuse a UCC record, the filing office shall refund the filing fee and return the record or a copy of the record in accordance with KRS 355.9-520(2).

(2) The reason or reasons for the refusal and other related information shall be made to the filer as soon as practicable, but no later than two (2) business days after the refused UCC record was received by the filing office. This information shall be provided by the same method by which the UCC record was communicated to the filing office, by mail, or by a more expeditious means.

(3) Records of refusal, including a copy of the refused UCC record and the grounds for refusal, shall be maintained until the first anniversary of the lapse date that applies or would have applied to the related financing statement, assuming that the refused record had been accepted and filed.

Section 5. The filing office may communicate to a filer that the filing office noticed potential defects in a UCC record, whether or not it was filed or refused for filing.

Section 6. If a filer believes that a UCC record that was refused for filing should not have been refused, the filer may contact the filing office to request a review of the refusal decision. The filer shall provide a copy of the refused record and a statement of the basis for the belief that the filing office wrongfully refused to file the record. Upon receipt of a request for review, the filing office shall investigate the claim. If the filing office confirms that the record should have been refused, the filing office shall provide a written explanation of the grounds for refusal. If it is determined that the filing office refused to accept the record in error, the filing office shall file the UCC record with the filing date and time the UCC record was originally communicated for filing. A filing office statement relating to the relevant financing statement shall be placed in the UCC information management system on the date that the corrective action was taken. The filing office statement shall provide the date of the correction and explain the nature of the corrective action taken. The record shall be preserved for so long as the record of the financing statement maintained in the UCC information management system.

MICHAEL G. ADAMS, Secretary of State

APPROVED BY AGENCY: October 21, 2021

FILED WITH LRC: October 29, 2021 at 1:32 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 25, 2022, at 9:00 a.m. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael R. Wilson, Director, Office of Business, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7422, fax (502) 564-5687, email michael.wilson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael R. Wilson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures governing the acceptance and refusal of UCC records submitted for filing with the Office of the Secretary of State.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 355.9-526 by establishing filing office rules.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the authorizing statutes by establishing filing office rules consistent with KRS Chapter 355, Article 9, and model UCC regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists with the effective administration of Article 9 of KRS Chapter 355 by providing uniformity and certainty with regard to the acceptance or refusal of UCC records submitted for filing.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects any individual, business, organization, or governmental entity that is submitting a UCC record for filing.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated individuals or entities identified in question (3) will have to familiarize themselves with the contents of this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Individuals identified in question (3) will incur costs in direct correlation to the number of UCC records they file and in accordance with statutorily established fees. This regulation does not establish any new fees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation provides uniformity and certainty as to the acceptance or refusal of UCC filings made with the Office of the Secretary of State.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There will be no cost to implement this administrative regulation.

(b) On a continuing basis: There is no cost to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: If any costs were to be identified, existing appropriations and fund sources for the Office of the Secretary of State would be utilized.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: An increase in fees or funding will not be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because any potential tiering would be inconsistent with the article it implements and model UCC regulations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact units, parts, or divisions of state or local government to the extent those entities submit UCC records for filing.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is required by KRS 355.9-526.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any additional revenue for state or local governments during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any additional revenue for state or local governments during subsequent years of implementation.

(c) How much will it cost to administer this program for the first year? There will be no additional cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to administer this program in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. No cost is anticipated beyond what has been historically allocated to this agency to administer the filing, indexing, and retrieval of UCC records.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: